Maria E. Seaman *Legislative Service Commission*

S.B. 277

123rd General Assembly
(As Introduced)

Sen. Drake

BILL SUMMARY

- Increases the percentage used to calculate age and service retirement allowances and disability benefits for Public Employees Retirement System (PERS) members who retire or are disabled after the bill's effective date.
- Modifies the method of calculating benefits paid to qualified survivors of members who die after the bill's effective date.
- Requires the PERS Board to recalculate benefits paid to retired PERS members, disability benefit recipients, and survivors based on the increases provided under the bill.
- Requires the PERS Board to recalculate certain benefits that were payable on or before December 31, 1979.
- Provides that the annual cost-of-living allowance paid to retired members, disability benefit recipients, and survivors is 3% (rather than a percentage based on the average percentage change in the Consumer Price Index).
- Authorizes the PERS Board to establish a defined contribution plan.
- Makes other changes to the law governing PERS.
- Relocates the provisions of the law governing the Ohio Deferred Compensation Program to Revised Code Chapter 148. (from Chapter 145.).

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CONTENT AND OPERATION

The bill makes several changes to the law governing the Public Employees Retirement System (PERS). One change is that it modifies the formula for calculating age and service retirement allowances and disability and survivor benefits and provides for the recalculation of certain benefits currently payable. Another change is that it fixes the annual cost-of-living increase paid to retired PERS members, disability benefit recipients, and survivors at 3%. In addition, the bill authorizes the PERS Board to establish a defined contribution plan. The bill makes other changes to the law governing PERS and relocates the provisions of law governing the Ohio Deferred Compensation Program.

INCREASES IN RETIREMENT ALLOWANCES AND DISABILITY AND SURVIVOR BENEFITS

Changes in age and service retirement allowances and disability benefits

(secs. 145.33, 145.331, 145.36, and 145.361)

Current law

Calculation of age and service retirement allowances. With regard to eligibility for age and service retirement and the formulas used to compute retirement benefits, current PERS law includes special provisions for certain law enforcement officers who are PERS members that differ from those for other PERS members.

--PERS members (other than law enforcement officers). A PERS member may be granted service retirement if the member has five years of service credit and has attained at least age 60, 25 years of service credit and at least age 55, or 30 years of service credit at any age. A member's annual single lifetime allowance is calculated as follows:

(1) Determine which amount is greater:

(a) The amount determined by multiplying the member's total service credit by $86;[1]

[1] *"Total service credit" means all service credited to a member, including service credit that is purchased or restored (sec. 145.01).*

(b) The amount determined by multiplying the member's total service credit by 2.1% of the member's final average salary (FAS) for each of the first 30 years of service credit, plus 2.5% of FAS for each subsequent year of service credit.[2]

(2) If the member is under age 65 or has less than 30 years of total service credit, multiply the greater of the amount determined under (1)(a) or (b) by the greater per cent shown in a schedule found in current law for the member's age or years of total service credit. For instance, if a member is age 58 or has 25 years of total service credit, the amount would be multiplied by 75%.

--PERS members who are law enforcement officers. A PERS member who is a law enforcement officer may be granted age and service retirement if the member has 25 years of total service credit as a law enforcement officer and has attained at least age 52 or has 15 years of total service credit as a law enforcement officer and has attained age 62. The member's annual single lifetime allowance is equal to 2.5% of the member's FAS for each of the first 20 years of total service credit, plus 2.1% for each year of total service credit in excess of 20.

Calculation of disability benefits. PERS members are eligible for one of two disability programs, referred to as the original plan and revised plan. Members with contributions on deposit with PERS on July 29, 1992, had a one-time opportunity to elect coverage under one of these programs. Members who began employment after July 29, 1992, are covered by the revised plan. Although the plans have some common features, they differ with respect to eligibility, benefit amount, and termination of benefits.

--Disability retirement. A PERS member who qualifies for a disability benefit and has disability coverage under the original plan is entitled to receive disability retirement consisting of the sum of the following:

(1) An annuity having a reserve equal to the amount of the member's accumulated contributions;

(2) A pension equal to the difference between the member's annuity and an annual amount determined by multiplying the member's total service credit, including years between the date of the member's disability retirement and attaining age 60, assuming continuous service, by the greater of (a) $86 or (b) 2.1% of FAS.

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[2] *With some exceptions, "final average salary" is determined by dividing by three the sum of the member's annual compensation for the three highest years of compensation for which the member made contributions (sec. 145.01).*

The amount of disability retirement cannot be less than 30% nor more than 75% of the member's FAS.

--Disability allowances. A member who qualifies for a disability benefit and has disability coverage under the revised plan is entitled to receive a disability allowance in an amount equal to the greater of (1) 45% of the member's FAS or (2) the product obtained by multiplying the member's total service credit by 2.1% of FAS, not exceeding 60% of FAS.

Calculation of disability allowances that are converted to age and service retirement. A PERS member who is receiving a disability allowance under the revised plan may apply to have the allowance converted to an age and service retirement allowance. The annual benefit is equal to the sum of the following amounts:

(1) The greater of an age and service retirement allowance calculated as described above (see "***Calculation of age and service retirement allowances***" above), excluding any years for which the member received a disability allowance, or the product obtained by multiplying the member's total service credit, including the years the member received a disability allowance, by 2.1% of FAS, not exceeding 45% of the member's FAS.

(2) An amount equal to the cost-of-living increases the member would have received had the member retired on the basis of age and service.

The bill

Increases in retirement allowances and disability benefits. The bill modifies the formula for calculating age and service retirement allowances and disability benefits by increasing the percentage of FAS used in the calculation.

--Age and service retirement allowances (other than for law enforcement officers). For each of the first 30 years of total service credit, the percentage of FAS is increased to 2.2% (from 2.1%).

--Age and service retirement allowances for law enforcement officers. The bill modifies the formula for law enforcement officers to 2.5% of the member's FAS for each of the first 25 years (rather than 20 years) of total service credit, plus 2.1% of FAS for each year in excess of 25.

--Disability benefits and conversions to age and service retirement. The bill increases to 2.2% (from 2.1%) the percentage of FAS used in the calculation of a disability benefit and a disability benefit that is converted to an age and service retirement allowance.

Survivor benefits

(sec. 145.45)

The bill modifies the method of calculating survivor benefits and, with regard to surviving spouses and children, modifies the eligibility requirements for survivor benefits.

Calculation of survivor benefits

Under current law, qualified survivors of a member who dies before age and service retirement may receive survivor benefits in lieu of accepting a refund of the member's accumulated contributions.

If the deceased member had at least 1 1/2 years of contributing service credit, with at least 1/4 year occurring within the 2 1/2 years prior to death, or was receiving a disability benefit, qualified survivors may receive monthly benefits of the greater of an annual benefit determined as a per cent of the deceased member's FAS or a specified minimum monthly benefit. The bill increases the minimum monthly benefit in the existing schedule and establishes a new schedule.[3] A qualified survivor will be entitled to the greater of a benefit under the existing schedule, as modified by the bill, or the new schedule.

The bill modifies the existing schedule as follows:

Number of qualified survivors affecting the benefit	Annual benefit as a per cent of deceased member's FAS	Minimum monthly benefit
1	25%	$250 (from $96)
2	40%	$400 (from $186)
3	50%	$500 (from $236)
4	55%	$500 (from $236)
5 or more	60%	$500 (from $236)

[3] *Under current law, benefits paid to a qualified spouse are paid in an amount determined for the first qualifying survivor under the existing schedule, but must be at least $106 per month if the deceased member had ten or more years of Ohio service credit. All other qualifying survivors share equally in a benefit or the remaining portion. The bill removes the requirement that, if the deceased member had ten or more years of Ohio service credit, the benefit paid to a qualifying spouse must be at least $106 per month.*

The new schedule is as follows:

Years of service	Annual benefit as a per cent of deceased member's FAS
20	29%
21	33%
22	37%
23	41%
24	45%
25	48%
26	51%
27	54%
28	57%
29 or more	60%

Qualifying survivors paid benefits under the new schedule share equally in the benefits, except that if there is a surviving spouse, the spouse receives the amount determined for the first qualifying survivor under the existing schedule as modified by the bill ($250). The other qualifying survivors share equally in the remaining portion of the benefit.

Survivor of disability recipient

The bill specifies that, for the qualified survivor of a disability benefit recipient, the FAS used in calculating a benefit must be adjusted, for each year between the effective date of the disability benefit and the recipient's date of death, by the lesser of (1) 3% or (2) the actual average percentage change in the Consumer Price Index (CPI), as prepared by the United States Bureau of Labor Statistics (U.S. City Average for Urban Wage Earners and Clerical Workers: "All Items 1982-84=100").

Eligibility for survivor benefits

Under current law, survivor benefits begin as qualified survivors meet certain eligibility requirements.

--Qualified spouses. Under current law, a qualified spouse is the surviving spouse of a deceased member who is age 62 or age 50, if the deceased member had 10 or more years of Ohio service credit, or at any age if the surviving spouse is caring for a qualified child or is adjudged physically or mentally incompetent. Under the bill, a qualified spouse may be eligible for benefits at any age (rather

than age 50) if the deceased member had ten or more years of Ohio service credit. All other eligibility requirements remain unchanged.

--Qualified child. Under current law, a qualified child is an unmarried child of a deceased member who meets certain age requirements or who, regardless of age, is adjudged physically or mentally incompetent at the time of the member's death. Under the bill, a child is a qualified child if the child has never been married (rather than "unmarried").

Recalculation of benefits

The bill requires PERS to recalculate certain benefits payable to retired PERS members, disability benefit recipients, and survivors.

Recalculations based on increases provided by the bill

(sec. 145.332)

Under the bill, PERS is required to recalculate each benefit payable prior to the bill's effective date. For the purposes of this provision, a benefit is an allowance, pension, or benefit payable on the basis of age and service retirement, commuted age and service retirement, disability, disability converted to age and service retirement, or a survivor benefit; a benefit paid under an optional retirement plan; or a coordinated benefit. It does not include any amounts payable by reason of additional deposits made by a member to the Employees' Savings Fund.

The recalculation is made as follows:

(1) Recalculate the benefit initially granted the recipient based on the formula changes provided under the bill for recipients of age and service retirement allowances, disability, or survivor benefits;

(2) Recalculate, using the amount determined under (1), any benefit increases that were authorized under PERS law and granted prior to the bill's effective date.

The sum of (1) and (2) is the recalculated benefit. If the recalculated benefit is less than the amount payable prior to the recalculation, PERS must continue to pay the greater benefit.

The recalculated benefit is payable on the first day of the first month following the bill's effective date and is included in the calculation of any cost-of-living increases granted to the recipient. If applicable, any increase is also included in the recalculation of pre-1980 benefits described below.

Recalculation of certain benefits that took effect before 1980

(sec. 145.3213)

Under the bill, PERS is required to increase benefits that became effective on or before December 31, 1979. For this purpose, a benefit is an allowance, pension, or benefit paid on the basis of age and service retirement, commuted age and service retirement, disability (under the original plan), or a survivor benefit; a benefit paid under an optional retirement plan; or a coordinated benefit. Benefit does not include any amounts payable by reason of additional deposits made by a member to the Employees' Savings Fund.

The increase is an amount determined by multiplying the benefit for which the recipient was eligible on the last day of the month in which the bill takes effect by the following percentages, as determined by the calendar year in which the benefit took effect:

Calendar year effective	Percentage of increase
1955 and earlier	25.0
1956	28.3
1957	38.4
1958	23.2
1959	27.1
1960	28.2
1961	24.6
1962	27.9
1963	26.6
1964	30.1
1965	23.5
1966	25.5
1967	28.7
1968	21.9
1969	23.9
1970	21.5
1971	22.2
1972	22.4
1973	21.3
1974	21.1
1975	20.7
1976	20.6
1977	20.5
1978	13.5

Calendar year effective	Percentage of increase
1979	4.0

The increase is effective on the first day of the month following the bill's effective date and is included in the calculation of any cost-of-living increases granted the recipient.

COST-OF-LIVING ALLOWANCES

Cost-of-living allowances

(sec. 145.323)

A cost-of-living allowance (COLA) is an annual increase, based on the Consumer Price Index (CPI), in the allowance, pension, or benefit of a recipient of an age and service retirement allowance or a disability or survivor benefit. The PERS Board determines annually the average percentage change in the CPI, as prepared by the United States Bureau of Labor Statistics (U.S. City Average for Urban Wage Earners and Clerical Workers: "All Items 1982-84=100"), for the 12-calendar-month period prior to January 1 compared to the next preceding 12-calendar-month period, as reported by the Bureau.

On a determination that the average percentage change in the CPI is an increase, or that the change plus a recipient's accumulation is an increase, the Board is required to increase the recipient's allowance, pension, or benefit by a percentage equal to the percentage increase in the CPI, or to that increase plus the accumulation, not exceeding 3%. Any percentage change in the CPI in any year that is excess of 3% is accumulated and used to determine cost-of-living increases in subsequent years.

Under the bill, PERS is required to annually increase each allowance, pension, or benefit by 3%. In doing so, the bill eliminates the requirement that the Board determine the annual percentage change in the CPI. The bill also eliminates the requirement that any percentage change in the CPI that is in excess of 3% be accumulated and used for future increases.

ESTABLISHMENT OF A DEFINED CONTRIBUTION PLAN IN PERS

Background

Under current law, PERS provides its members a retirement benefit under a plan that is often called a "defined benefit plan." The plan provides, to those who meet the age and service requirements, a retirement benefit based on a formula: a

percentage of final average salary multiplied by the member's years of service credit. In a "defined contribution plan," the member and employer contribute to the plan a specified percentage of the member's compensation. These contributions are held in account and invested, usually at the direction of the member. At retirement or on withdrawal of contributions, the benefit payable to the member is determined by the amount, including investment earnings, in the member's account.

Establishment of defined contribution plan

(secs. 145.091, 145.23, 145.25, 145.80, 145.81, 145.811, 145.812, and 145.813)

The bill authorizes the PERS Board to establish one or more plans consisting of benefit options that provide for an individual account for each participating member and under which benefits are based solely on the amounts that have accumulated in the account. Each plan must be available to all PERS members and may include options under which a participating member receives definitely determinable benefits. The PERS Board may administer the plans, enter into contracts with other entities to administer the plans, or both.

Under the bill, each plan must meet the bill's requirements and be a qualified retirement plan under section 401(a) of the Internal Revenue Code.[4] In addition, each plan must meet the requirements of the Internal Revenue Code that are necessary to qualify as a retirement system maintained by a state or local government entity and each participant in a plan must qualify as a member of that system.[5] Each plan must qualify as a "governmental plan" under the provisions of the Internal Revenue Code that allow employers to "pick-up" employee contributions (see "***Employer pick-up***" below).[6] Each plan must require the PERS Board, or the entity that administers the plan pursuant to a contract entered into with the Board, to provide for the maintenance of an individual account for each member participating in a plan. A plan may include deposits to the Defined Contribution Fund created by the bill or to the Employees' Savings Fund in

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[4] *A qualified retirement plan is a retirement plan that meets certain requirements specified in federal law and, if the requirements are met, contributions to and amounts earned under the plan are not subject to federal and state income tax until distributed to the employee (100 Stat. 2085, 26 U.S.C.A. 401(a), as amended).*

[5] *The plan's status as a retirement plan maintained by a state or local government entity exempts members from requirements that employees and employers contribute to Social Security (100 Stat. 2085, 26 U.S.C.A. 3121(b)(7)(F), as amended).*

[6] *(100 Stat. 2085, 26 U.S.C.A. 414(d), as amended).*

accordance with the provisions of current law that permit members to make additional deposits to PERS.[7]

The Board is to adopt rules to implement any plan established under the bill.

Participation in a defined contribution plan

(secs. 145.91 and 145.98)

Under the bill, the right of each member participating in a defined contribution plan to a retirement, disability, survivor, or death benefit, to health or long-term care insurance, or to a withdrawal of any amounts that have accumulated on a member's behalf is governed by the plan selected by the member.[8] Contributions to a defined contribution plan established under the bill cease on death, termination of employment, or for any other reason specified by the plan selected by the member.

Contributions to a defined contribution plan

(secs. 145.23, 145.85, 145.86, 145.87, and 145.88)

Member and employer contributions

Each member participating in a defined contribution plan must contribute to PERS a percentage of the member's earnable salary equal to the percentage contributed by members participating in the current defined benefit plan.[9] Contributions must be made in accordance with current law governing member contributions to PERS.

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[7] *The Employees' Savings Fund is the fund in which are accumulated the contributions by members participating in the defined benefit plan; however, a member may make additional deposits to this fund and, at the time of retirement, receive an annuity or cash refund (See "**Interest earned and credited on additional deposits**" below).*

[8] *PERS members are exempt from participation in Social Security and, therefore, generally are not eligible for Social Security survivor or disability benefits. There may be benefit options under the defined contribution plan that do not offer survivor or disability benefits. Therefore, there may be some members who do not have survivor or disability coverage.*

[9] *Each PERS member who is not a law enforcement officer contributes 8.5% of the member's earnable salary. Law enforcement officers contribute 9.0%.*

For each member participating in a defined contribution plan, an employer must contribute a percentage of the member's earnable salary to PERS equal to the percentage contributed on behalf of members participating in the defined benefit plan, less the percentage transferred to the Employers' Accumulation Fund (see "***Employer contribution to Employers' Accumulation Fund***" below).[10]

Amounts contributed by members and employers, and any earnings on those amounts, are to be deposited and credited in accordance with the defined contribution plan selected by the member. If required by the plan selected by the member, the amounts may be deposited into the Defined Contribution Fund created by the bill for that purpose.

Employer contributions to Employers' Accumulation Fund

For each member participating in a defined contribution plan, PERS is required to transfer to the Employers' Accumulation Fund a portion of the employer contribution.[11] The portion equals the percentage of compensation of participating members for whom the contributions are being made that is determined by an actuary appointed by the PERS Board to be necessary to mitigate any negative financial impact on the system of participation in a defined contribution plan.

The PERS Board must have prepared annually an actuarial study to determine whether the percentage transferred should be changed to reflect a change in the level of negative financial impact resulting from participation of members in a defined contribution plan. The percentage transferred is to be increased or decreased to reflect the amount needed to mitigate the negative financial impact, if any, on the system, as determined by the actuarial study. An increase or decrease takes effect on the first day of the month following the date the conclusions of the actuarial study are reported to the Board.

PERS is required to make the transfer until the unfunded actuarial accrued liability for all benefits, except health care benefits provided under the defined benefit plan and benefit increases to members and former members participating in the defined benefit plan granted after the bill's effective date, is fully amortized, as determined by the annual actuarial valuation prepared under current PERS law.

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[10] *A public employer contributes 13.31% on behalf of a member employed by the state, 13.55% on behalf of a member employed by a local government, and 16.7% on behalf of a law enforcement officer.*

[11] *The Employers' Accumulation Fund is the fund in which the amounts contributed by employers are accumulated.*

Deposits to and withdrawals of individual accounts

(sec. 145.97)

Each defined contribution plan established under the bill must permit a participating member to do all of the following:

(1) Maintain on deposit with PERS, or the entity administering the plan, any amounts that have accumulated on behalf of the member;

(2) If the member has withdrawn the amounts described in division (1), redeposit with the system or the entity administering the plan the amounts withdrawn;

(3) Make additional deposits as permitted by the Internal Revenue Code.

Spousal consent

(sec. 145.92)

Under the bill, if a member participating in a defined contribution plan is married at the time any benefits under the plan commence, before making any payment PERS or the entity administering the plan must obtain the consent of the member's spouse to the form of payment selected by the member.

Each plan established under the bill must include requirements for consent that are the same as the requirements specified in the Internal Revenue Code (IRC).[12] A plan may provide for waiver of consent if the spouse cannot be located or for any other reason specified in the regulations adopted under the IRC. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

Vesting

(sec. 145.95)

The bill specifies that, with certain exceptions, the right of a member participating in a defined contribution plan to any payment or benefit accruing from contributions made by or on behalf of the member vests as follows:

(1) A member's right to any payment or benefit that is based on the member's contributions is nonforfeitable.

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[12] *(100 Stat. 2085, 26 U.S.C.A. 417(a)(2), as amended).*

(2) A member's right to any payment or benefit that is based on contributions by the member's employer is nonforfeitable as specified by the plan selected by the member.

Exceptions are for members who retire and return to public employment within a specified time period, for members who are found guilty of theft in office or certain felony sex offenses, and for members who are subject to withholding orders for child-support obligations.

Changes to accommodate a defined contribution plan

(secs. 145.01(F), 145.04, 145.05, 145.06, and 145.091)

The bill specifies that PERS consists of the defined benefit plan and, if established, any defined contribution plans authorized by the bill. Each member of the system, regardless of the plan selected, is subject to the provisions that exist in current PERS law with respect to membership in and the administration and management of PERS.

Applicability of PERS law to a defined contribution plan

(sec. 145.82)

The bill specifies that, with certain exceptions, the provisions of current PERS law applicable to the existing defined benefit plan do not apply to a defined contribution plan established under the bill.[13] However, a defined contribution plan may incorporate any of those provisions as specified in the plan document.

The following chart lists the provisions of PERS law applicable to the defined benefit plan that do apply to a defined contribution plan established under the bill:

Revised Code section	Description
145.22	Actuarial reports
145.221	Amortization period
145.23	Funds
145.25	Funds are separate legal entities
145.26	Treasurer of State custodian of funds
145.27	Records open to the public
145.296	Payment of contributions during disability

[13] *(R.C. 145.201 to 145.70).*

Revised Code section	Description
145.38	Reemployed retirants
145.382	Exceptions to reemployment provisions
145.391	Excess benefit arrangements
145.47	Employee contributions
145.471	Employer may "pick-up" employee contributions
145.48	Employer contributions
145.483	Delinquent contributions
145.49	Law enforcement division contributions
145.54	Expenses of administering PERS
145.55	Member consents to deductions
145.56	Exemption from tax; execution; garnishment
145.561	Vesting
145.563	Recovery of erroneous payments
145.57	Withholding orders for restitution
145.69	Budget requirements; appropriation
145.70	Payments from state treasury

OTHER PERS CHANGES

Employer pick-up

(sec. 145.471)

Federal law authorizes individual governmental employers to "pick-up" employee retirement contributions as a means of deferring federal income taxes on these amounts. When a governmental employer picks up employee contributions, the contributions, even though they may be designated under state law as employee contributions, are treated as employer contributions for state and federal income tax purposes and not taxed until the employee receives a refund or benefit. Although pick-up plans have been implemented by PERS-covered employers, they are not authorized by state statute. The bill specifies that employee contributions made under PERS may be picked up by the employer.

The Income Fund

(sec. 145.23)

The Income Fund is the fund from which interest is transferred and credited on the amounts in the Employers' Accumulation Fund, Annuity and Pension Reserve Fund, and Survivor Benefit Fund, and is a contingent fund from which the

special requirements of those funds may be paid.[14] All income derived from the investment of PERS funds and all gifts and bequests are credited to this fund. Any deficit occurring in any other fund that will not be covered by payments to that fund must be paid by transfers of amounts from the Income Fund to the other funds. If the amount in the Income Fund is insufficient at any time to meet the amounts payable from the Fund, the amount of the deficiency is paid by an additional employer contribution that is credited to the Income Fund.

Under the bill, if the amount in the Income Fund is insufficient at any time to meet the amounts payable from the Annuity and Pension Reserve Fund or Survivors' Benefit Fund, the amount of the deficiency is to be transferred from the Employers' Accumulation Fund.

Interest earned and credited on additional deposits

(sec. 145.23)

Under current law, any person who has funds on deposit with PERS may make additional deposits to the Employees' Savings Fund and, at the time of retirement, receive an annuity having a reserve equal to the amount deposited or a cash refund of those amounts with interest as may have been allowed by the PERS Board at the end of each calendar year.

The bill specifies that, for deposits received in a calendar year, interest is to be earned beginning on the first day of the calendar year next following the year in which contributions are made and ending on the last day of that year. In the case of a payment made prior to the last day of the year, interest is earned ending on the last day of the month prior to the date of payment. The PERS Board must credit interest at the end of the calendar year in which it is earned.

Normal and deficiency contributions by employers

(secs. 145.01(W), 145.22, 145.23, 145.322, 145.325, 145.33, 145.34; secs. 145.49, 145.50, and 145.52, repealed by the bill)

The bill repeals all provisions in current law concerning normal and deficiency contributions and removes all references to those terms (see **COMMENT**).

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[14] *The Annuity and Pension Reserve Fund is the fund from which all pensions, annuities, and disability benefits are paid. The Survivors' Benefit Fund is the fund from which survivor benefits are paid. (R.C. 143.23).*

Failure by employer to transmit contributions

(sec. 145.47)

Under current law, when an employer fails to transmit employee contributions to PERS, the PERS Board is authorized to make a determination of the employers' liability for the contributions and certify to the employer the amount due for collection in the same manner as delinquent employer contributions.[15] Any amount collected is a penalty against the employer and held in trust pending receipt of the contributions. The amount held in trust is transferred to the Employers' Accumulation Fund as a credit to the employer.

Under the bill, any amounts collected from an employer are held in trust pending receipt of a report of contributions for the period the employer failed to transmit the contributions. Thereafter, the amount held in trust is transferred to the Employees' Savings Fund to the credit of the employees. Any amount remaining after the transfer to the Employees' Savings Fund is transferred to the Employers' Accumulation Fund to the credit of the employer.

Determination of employer contribution rate

(sec. 145.48)

Under current law, each employer pays to the Employers' Accumulation Fund a percentage of the earnable salary of all contributors. The contribution rate is determined by an actuary, appointed by the PERS Board, on the basis of regular interest and such mortality and other tables as are adopted by the Board. The rate is the sum of several percentages of earnable salary that are required to fund pension reserves and any additional liabilities arising from prior service credit and the payment of age and service retirement, disability, and survivor benefits.

The bill repeals the existing list of percentages that make up the employer contribution and instead specifies that the sum of the following is the employer contribution rate:

(1) The percentage of earnable salary that, when added to the percentage of earnable salary contributed by each member, will cover the costs of benefits to be paid to members for each year of service rendered;

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[15] *The bill specifies that PERS (rather than the PERS Board) performs the activities with respect to the collection of employee contributions.*

(2) The percentage of earnable salary that, if paid over a period of future years, will discharge fully the system's unfunded actuarial accrued pension liability;

(3) The percentage of earnable salary designated by the Board to pay certain health care benefits authorized under current law.

If recognized assets exceed the liabilities for service previously rendered, on approval of the Board, a percentage of earnable salary may be deducted from the employer rates of contribution that, if deducted annually over a period of future years, will eliminate the excess.

Rulemaking procedures

(sec. 145.09)

Under current law, the Attorney General is required to prescribe procedures for the adoption of rules by the PERS Board. The procedures are to be consistent with the provisions of the Administrative Procedure Act that do not require a public hearing, and all rules must be filed under the procedures in order to be effective.[16]

The bill eliminates this requirement and instead requires the PERS Board to adopt rules in accordance with the provisions of the Administrative Procedure Act that do not require a public hearing.

Excess benefit arrangement

(sec. 145.391)

The bill includes a provision allowing PERS to establish an excess benefit arrangement under which contributions that exceed the federal limits for retirement plans like that operated by PERS can be paid into a separage trust. The same provision was enacted by Sub. S.B. 190 of this General Assembly and can, therefore, be removed from this bill unless the Governor vetoes S.B. 190.

Technical changes

(secs. 124.24, 145.05, 145.06, 145.07, 145.19, 145.20, 145.21, 145.22, 145.23, 145.26, 145.27, 145.29, 145.297, 145.322, 145.33, 145.331, 145.34, 145.41, 145.45, 145.452, 145.47, 145.55, 145.563, 148.01, 148.02, 2907.15, 2921.41, 3375.411,

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[16] *These provisions are in R.C. 111.15.*

The bill makes a number of technical changes to Revised Code sections, including grammatical changes and changes in dates.

RELOCATION OF OHIO DEFERRED COMPENSATION PROGRAM

Relocation of provisions governing the Ohio Deferred Compensation Program

(secs. 124.24, 145.04, 145.07, 145.09, 145.12, 145.14, 145.19, 145.20, 145.21, 145.22, 145.25, 145.27, 145.29, 145.297, 145.36, 145.361, 145.41, 145.42, 145.452, 145.46, 145.48, 145.49, 145.55, 145.56, 145.563, 145.69, 145.70, 148.01, 148.02, 148.04, 148.06, 148.09, 148.10, 306.45, 308.15, 2329.66, 2907.15, 3105.171, 3105.63, 3375.411, 3381.13, and 6121.04; Section 4)

The current law governing PERS and the Ohio Deferred Compensation Program are codified in Revised Code Chapter 145. The bill relocates the provisions of law governing the Ohio Deferred Compensation Program to Chapter 148. (from Chapter 145.). In doing so, the bill reorganizes certain provisions of PERS law to accommodate the relocation and authorizes the Director of the Legislative Service Commission to renumber administrative rules governing the Program to reflect their transfer.

COMMENT

According to Toba Feldman, PERS' Director of Legal and Legislation, the provisions of current law governing the normal and deficiency contribution rates were enacted to permit PERS to (1) estimate, for a two-year period, the amount of contributions owed to PERS by the State of Ohio on behalf of state employees and (2) after determining the actual contributions owed to PERS for the two-year period, collect from the State of Ohio the amount of deficiency. Because the State of Ohio no longer pays contributions to PERS in this manner, PERS believes that the provisions of current law governing the normal and deficiency contribution rates (and any references to those provisions) are obsolete.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-29-00	p. 1541

S0277-I.123/bc